

Supervisors, managers, team leaders: Please provide a copy of this memorandum to your employees not receiving electronic mail.

In Reply Refer To:
Mail Stop 602
#

Memorandum

To: All USGS Employees

From: Suzette M. Kimball
Director

Subject: U.S. Geological Survey Anti-Harassment Policy

The U.S. Geological Survey (USGS) is committed to creating and maintaining a work environment where all employees have a fair and equal opportunity to succeed. Workplace harassment is a serious issue that prevents any organization from achieving its goals.

While the Equal Employment Opportunity (EEO) process seeks to make individuals whole for discrimination that has already occurred, the Anti-Harassment Program¹ is intended to ensure that the USGS takes immediate appropriate and reasonable corrective actions to eliminate harassing conduct, regardless of whether the conduct violated the law, before it becomes severe or pervasive.

Harassment

Unlawful harassment includes unwelcome intimidation, ridicule, insult, or physical conduct based on race, color, religion, sex (whether or not it is of a sexual nature), national origin, age, disability (physical/mental), sexual orientation, protected genetic information, parental status, or participation in EEO activity where:

- An employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct; or
- The conduct is sufficiently severe or pervasive as to alter the terms, conditions, or privileges of the employee's employment, or otherwise create a hostile or abusive work environment.

Petty slights, annoyances and isolated incidents (unless extremely serious) will generally not rise to the level of unlawful harassment. However, repeated instances of such unwanted and inappropriate conduct may constitute harassment, and employees should be aware that any

¹ Equal Employment Opportunity Commission's (EEOC) Management Directive 715 (MD-715) requires federal agencies to have policies and procedures in place to address harassment in the workplace.

harassing conduct, even if not technically unlawful, may result in disciplinary action. Examples of harassing conduct include, but are not limited to:

- Epithets;
- Slurs;
- Innuendos;
- Stereotyping/Threatening;
- Intimidating;
- Written/Graphic Material; and
- Jokes/Pranks

The USGS requires all employees' cooperation in reporting such misconduct, which they may do without the fear of reprisal, and requires all managers to take swift action to address it, in accordance with USGS policies and procedures.

Discriminatory Harassment

Not all harassment rises to the level of discriminatory harassment. Discriminatory harassment occurs when an individual is being harassed because of their race, color, sex, religion, national origin, age, disability, genetics, sexual orientation, parental status, or reprisal, and culminates in a tangible employment action or the actions are so severe and pervasive as to alter the working conditions.

Reprisal

Reprisal is any act of restraint, interference, coercion, or discrimination against any person who has opposed harassing practices or participated in proceedings that prohibit workplace harassment. Reprisal violates the same laws and regulations that prohibit workplace harassment.

Applicability

This policy applies to all USGS employees and non-employees who may be assigned to perform duties in support of the USGS.

Allegations

Employees should immediately report any allegations of harassment to their immediate supervisor, another manager in the office, their human resources office, or the Office of Diversity and Equal Opportunity. Allegations of discriminatory harassment should be reported to the Office of Diversity and Equal Opportunity (Individuals with hearing and speech impairment may call using the Federal relay service toll-free 1-800-877-8339) at (703) 648-7770 or (866) 816-1106 or email James Mays at jmmays@usgs.gov.

USGS employees need to understand that:

- Employees are responsible for reporting behavior they view as harassment before it becomes severe or pervasive. While isolated incidents generally do not violate Federal law, a pattern of incidents may.
- Employees reporting harassing conduct as described above still have the right to seek EEO counseling from the office of Diversity and Equal Opportunity (DEO) within the established time frames of 45-calendar days from the date of incident.

Managers and supervisors should be aware that their leadership roles place them in a unique position where their behavior is particularly important in creating a harassment-free work environment. Accordingly, in the event an incident of harassment is reported or there is reason to believe that harassment is occurring, managers must take swift and appropriate action to rectify the situation. Managers must protect the confidentiality of individuals reporting harassment to the extent possible

USGS employees have specific rights during the inquiry of harassment, including:

1. Employees who report harassment and/or cooperate with the internal inquiry are protected from retaliation.
2. Allegations of harassment will remain confidential to the extent possible. There may be times when complete confidentiality cannot be maintained in order for a thorough and complete inquiry into the incident to be conducted and appropriate action taken
3. An internal inquiry into the complaint of harassment will be prompt, thorough, and impartial.
4. Managers are required to take appropriate and immediate action once they are made aware of an allegation of harassing conduct even if employees do not want any action to be taken
5. Depending on the nature of the allegation, management may take appropriate action as deemed necessary, such as separation/termination of violating parties, granting appropriate leave, changing work assignments/supervisors, etc.
6. If the allegations are found to be substantiated, management shall take immediate reasonable action to stop the conduct and make every reasonable effort to ensure it does not reoccur.

How to Report Harassment

Individuals should take the following actions to avoid harm from unlawful harassment:

1. When appropriate, promptly inform the alleged offender that his/her behavior is unwelcome and must stop;
2. Employees who believe they have been harassed, or have witnessed conduct that is in violation of this policy should immediately report the behavior either verbally or in writing to:
 - a. A supervisors or management official, or
 - b. An employee in the office of Human Resources (Non-discriminatory harassment)

- c. Diversity and Equal Opportunity (Discriminatory harassment)
3. Non-employees, such as volunteers and visitors, should immediately notify an individual in authority over their event/function/work site.
4. Contractors should contact their employer immediately.

Responding to Allegations of Harassment

1. When a manager/supervisor receives an allegation of harassment directly from an individual, is a witness to harassment, or is informed about an allegation of harassment, he/she must:
 - a. Managers/Supervisors may seek guidance/direction from the Office of Human Resources, if needed, on responding to allegations of non-discriminatory harassment, and/or Diversity and Equal Opportunity (DEO) for allegations of discriminatory harassment (race, age, sex, etc.). Assure the employee who reports alleged harassment that the USGS will:
 - i. Conduct a prompt, thorough, and impartial inquiry;
 - ii. Protect his/her confidentiality to the extent possible, and;
 - iii. Take immediate and appropriate corrective action if it is determined there has been harassment.
 - b. When an allegation of harassment occurs in a manager's or supervisor's area of responsibility, he/she should take measures to stop any inappropriate conduct and prevent further harassment or retaliation while an inquiry is being conducted. An example of such measure would be to change work assignments to avoid contact between the parties or temporarily transfer the alleged harasser. The alleged victim should not be involuntary transferred or otherwise burdened, since such measures could be considered unlawful retaliation.
 - c. In all instances, the manager or supervisor to whom the incident is reported must inform the individual of his/her right to:
 - i. Seek EEO counseling from the Office of Diversity and Equal Opportunity (DEO) within 45-calendar days from the date of the incident or date the individual became aware of said discriminatory harassment, or
 - ii. File a grievance in accordance with the terms of his/her formal bargaining contract (If applicable), or
 - iii. Pursue an administrative grievance under 370 DM 771 or seek relief through any other statutory process (i.s. Merit System Protection Board, Office of Special Counsel).

Conducting the inquiry

1. An inquiry is an examination that involves collecting testimony and, if relevant, supporting documents.
2. The inquiry must result in a record sufficient enough to support any corrective or disciplinary action taken, or that indicates that there is not sufficient evidence to support corrective or disciplinary action.
3. The alleged offender's office must pay for the cost of the inquiry, if there are any costs associated.

4. Management officials may use one of the following resources to conduct the fact-finding inquiry, depending on the circumstances surrounding the incident:
 - a. A supervisor or manager from within the program area or Region,
 - b. A supervisor or manager from outside the program area or Region, or
 - c. A contractor from an investigative firm.
5. The management official must ensure that the individual conducting the inquiry:
 - a. Does not have a conflict of interest with either the alleged victim or the alleged offender;
 - b. Has the necessary skills that are required for interviewing witnesses, evaluating credibility, and gathering facts; and
 - c. Provides the decision maker, within 21-calendar days, unless extenuating circumstances exists, a written summary of the findings. The summary may be brief, depending on the complexity and seriousness of the incident.
 - d. Coordinates with the manager/supervisor responsible for the inquiry and ensures that all obligations are met for the inquiry.
 - e. Confirms the name, position and supervisory chain of the alleged victim and the alleged offender, and identify potential witnesses.
 - f.
6. The manager/supervisor or person conducting the inquiry should, at a minimum, adhere to the following process:
 - a. Ask questions of the alleged victim, alleged offender (depending on relationship i.e. contractor v. agency employee), witnesses, and obtain signed statements if possible.
 - b. Identify the alleged harassment to include:
 - i. A detailed account of the specific actions/comments;
 - ii. The date(s), time(s), and location(s) of alleged harassment, and;
 - iii. The names of witnesses or others with knowledge of this alleged harassment.
 - c. Obtain a detailed response to each allegation from the alleged offender (depending on relationship i.e. contractor v. agency employee), as well as witnesses who can corroborate the alleged offender's account of events.
 - d. Refrain from offering his/her opinion.
 - e. Inform all interviewees that the individual who reported the harassment, the alleged victim, and all witnesses are protected against retaliation.
7. If the alleged offender does not deny the accusation, there is no need to interview witnesses. Management officials can immediately determine appropriate corrective action.

Taking Action after the Inquiry is Complete

When the inquiry is complete the supervisor/manager or person conducting the inquiry will summarize their findings in writing, and include any statements or other evidence obtained from the alleged victim, alleged offender, and witnesses. The summary will be provided to the supervisor/manager of the alleged offender who will consult with Employee Relations, the Solicitor's office and any others, as deemed necessary, to take appropriate corrective action, if necessary..

1. Responsibility for determining whether inappropriate conduct occurred which may warrant disciplinary action rests with the first line supervisor of the alleged offender.
2. Appropriate corrective action may include disciplinary action, up to and including removal. The appropriate management official makes this decision in consultation with the servicing Employee Relations officials.
3. If a summary report includes information that a manager or supervisor may not have properly carried out his/her responsibilities under this policy, he or she may be subject to appropriate disciplinary action, up to and including removal, as determined by the appropriate management official in consultation with the Employee Resources.
4. All efforts to address allegations must be documented.
5. Managers/supervisors involved in the process must continually assess the need for training. Training is recommended regardless of the outcome of an inquiry.

Remedies

For an employee to raise allegations of harassing conduct through the EEO Complaint process, an employee must contact an EEO Counselor within **45-Calendar days** from the date of the most recent incident of discriminatory harassment or the date the employee became aware of alleged harassment. (29 CFR Part 1614.105(a)(1))

For an appeal to the MSPB pursuant to 5 CFR Part 1201.22, an employee must file a written appeal with the board within **30 days** of the effective date of an appealable adverse action as defined here.²

This policy is to be posted at both the human resources offices, at the Office of Diversity and Equal Opportunity and on the USGS Internal Website as a way to communicate the USGS commitment to a workplace free from all forms of harassment. For questions regarding this policy or a specific situation related to this policy, please call the Office of Diversity and Equal Opportunity or an EEO counselor at (703) 648-7770 or (866) 816-1106.

Authorities

- Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act) of 2002, as amended (P.L. 107-174)
- Equal Employment Opportunity Commission (EEOC) Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, Notice 915.002, June 18, 1999.
- EEOC Directive: Prevention and Elimination of Harassing Conduct in the Workplace, Notice 560.005, August 9, 2006.

² For specific information regarding jurisdiction, processes/procedures and covered persons under the Merit System Protection Board (MSPB) please visit <http://www.mspb.gov/index.htm>.

cc: Director's File - MS 114
Director's Chron - MS 114
Official File - MS 602

USGS:DEO: